

STRAITS SETTLEMENTS.

(Privy Council)

Present: Lord Atkin, Lord Russell of Killowen and Lord Macmillan

February 3, 1933.

SHAIK SAHIED bin ABDULLAH (Defendant)
BAJERAI - - - Appellant

vs.

S. S. T. SOCKALINGAM CHETTIAR (Plaintiff)
- - - Respondent

(Singapore Suit No. 1448 of 1930. Appeal No. 16 of 1931. Privy Council Appeal No. 57 of 1932).

Money and Moneylending—loan transaction—mercantile law—Moneylenders Acts (1900-1927)—whether applicable in the Colony—Ordinance No. 111 (Civil Law) S. 5.

The English Moneylenders Acts, 1900 to 1927, form no part of the mercantile law. They contain saving clauses which make it plain that borrowing in the course of an ordinary commercial transaction is excluded from their scope. These acts are therefore not applicable to the Straits Settlements.

Seng Djit Hin v. Nagurdas Pursotamdas & Co. (1923) A.C. 444 referred to.

Appeal by special leave from a judgment of the Court of Appeal in Singapore (Murison, C. J., and Thorne and Terrell, JJ.) dated the 30th of November 1931 dismissing with costs an appeal of the appellant against a judgment and order of Sproule, Ag. C. J., dated the 7th of August 1931.

The respondent issued a writ of summons on the 29th October 1930 against the appellant claiming the payment of \$14,000—the balance of principal due on a promissory note for \$15,000 dated the 25th January 1930 and of \$3200 on a cheque drawn by appellant dated the 8th September 1930 and payable to the Respondent or bearer and dishonoured on presentation. By his defence dated the 1st December 1930 the appellant pleaded *inter alia* the Moneylenders Acts, 1900 to 1927, and alleged that the respondent at material times carried on business of a moneylender and that the promissory note and cheque had been given for and in respect of moneys lent by the respondent to the appellant in breach of the requirements of section 6 of the Moneylenders Act, 1927.

Section 6 of the Moneylenders Act, 1927 provides—

“(1) No contract for the repayment by a borrower of money lent to him.....by a moneylender after the commencement of this Act or for the payment by him of interest on money so lent and no security given by the borrower.....in respect of any such contract shall be enforceable unless a note or memorandum in writing of the contract be made and signed personally by the borrower and unless a copy thereof be delivered or sent to the borrower within seven days of the making of the contract; and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given as the case may be.

“(2) The note or memorandum aforesaid shall contain all the terms of the contract, and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and either the interest charged on the loan expressed in terms of a rate per cent. per annum or the rate per cent. per annum represented by the interest charged as calculated in accordance with the provisions of the First Schedule to the Act.”

By his Reply dated and delivered on the 22nd June 1931 the respondent joined issue on the defence, denied that the Moneylenders Acts, 1900 to 1927, were law in the Straits Settlements and alternatively alleged that he the respondent was under no legal obligation to carry out Section 6 of the Moneylenders Act, 1927 because the Government of the Colony had not provided any facilities for registration whereby that section might be carried into effect.

The case was tried on the 4th and 5th August 1931 before Sproule, Ag. C. J., who found in favour of the respondent on the facts and on the 7th August 1931, delivered judgment and held that the facts of the case did not allow of the application of the Moneylenders Act, 1927 in the Colony of the Straits Settlements. Judgment was accordingly entered for the respondent with costs.

The Appellant appealed to the Court of Appeal against the judgment of Sproule, Ag. C. J. and the appeal, which was confined to the question of applicability of the Moneylenders Acts in the Strait Settlements, came on for hearing on the 25th November 1931 before Murison, C. J. and Terrell and Thorne, JJ. On the 7th December 1931 the Judgment of the Court was delivered, when the appeal was dismissed with costs.

The appellant preferred an appeal to the Privy Council against the judgment of the Court of Appeal and contended *inter alia* that—

(1) The Moneylenders Acts 1900—1927 were part of the law to be administered in the case.

(2) Section 6 of the Moneylenders Act, 1927 was part of the law to be administered in the case.

(3) There had been no compliance with section 6 of the 1927 Act.

(4) The question which had arisen in the case was a question with respect to mercantile law generally.

D. N. Pritt, K. C. and *James Wylie*, for the Appellant.

Sir Stafford Cripps, K. C. and *H. C. Marks*, for the Respondent.

Cur. ad. Vult.

THE JUDICIAL COMMITTEE (Lord Atkin, Lord Russell of Killowen, Lord Macmillan) dismissed the appeal with costs.

The Judgment of the Board was delivered by Lord Atkin.

Lord Atkin—This is an appeal from the Supreme Court of the Straits Settlements, where the Court of Appeal dismissed an appeal from the Acting Chief Justice, who gave judgment for the plaintiff. The

action was brought by the plaintiff, a professional moneylender, against the defendant, a landowner, upon a promissory note payable on demand and a post-dated cheque given in respect of money-lending transactions.

The only defence material to this appeal is that there was no memorandum in writing of the contract signed by the borrower in pursuance of Section 6 of the English Moneylenders Act. The question is whether the provisions of Section 6 apply to this transaction in Singapore.

The suggestion is that the section is made applicable by Section 5 (17) of the Civil Law Ordinance No. 111 of 1920 of the Straits Settlements. That section provides:

"all questions or issues which arise or which have to be decided in the Colony with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case at the corresponding period if such question in issue had arisen or had to be decided in England unless in any case other provision is or shall be made by statute."

The argument is that the question in this case is whether the defendant is liable on a negotiable instrument, that such question is one "with respect to" mercantile law, which includes the law of negotiable instruments, and that in applying English law to such a case in England the Courts would have had to apply the Moneylenders Act. The Courts in Singapore have rejected this contention, and their Lordships agree with this decision, but for reasons which do not altogether conform to those given in the Colony.

It is to be noted that the section does not purport to apply in every mercantile transaction. It applies only where a question or issue has to be determined with respect to mercantile law. The general object no doubt is to secure uniformity of mercantile law in Singapore and the United Kingdom, though of course, whatever the object, full effect must be given to the plain meaning of the words used. It is obvious that there are mercantile transactions in which no question with respect to mercantile law arises; just as there are non-mercantile transactions in which such a question does arise.

On a claim arising out of a sale of goods, the only question may be whether the plaintiff ever entered into an alleged written contract. If the sole question is whether his signature is a forgery, no question as to mercantile law seems to arise; if it is said he had given express or implied authority to someone "with respect to" the law of principal and agent or mercantile law generally may well arise.

Similarly, an allegation that an assent to a mercantile contract was obtained by duress, or by fraud, would normally not be a question with respect to mercantile law. So if a question of insurable interest arose on a claim on a fire policy, the law as to what

constituted an insurable interest would be determined by the law of England; but the application of the principles in Singapore might depend upon the law of landlord and tenant, bills of sale, or the administration of deceased persons' estates none of which in themselves form part of the mercantile law.

It might, on the other hand, depend upon questions relating to the law of contracts of sale or contracts of carriage by sea or land, which would bring into application the statute. Similarly, in an ordinary action of fraud, or in a criminal prosecution, in neither case arising out of mercantile transaction, questions of property might arise which could only be determined by recourse to mercantile law. Now it seems beyond dispute that the English Moneylenders Acts, 1900 to 1927, form no part of the mercantile law. They contain saving clauses which make it plain that borrowing of money in the course of ordinary commercial transactions is excluded from their scope.

If such a case as this arose in England between a professional moneylender and a landowner it would not, I think, occur to anyone that an issue raised under any of the sections of the Moneylenders Acts related to mercantile law. Indeed, it seemed to be admitted in argument that such a question only arose where the suit was on a negotiable instrument. So that if the moneylender took a mortgage with a covenant or promissory note, the same defence that he was unregistered would arise "with respect to mercantile law" in the second case but not in the former. The contention is untenable.

On this point the learned Judges with respect have followed too closely the decision of this Board in *Seng Djit Hin v. Nagurdas Purshotumdas and Co.* (1923), A.C. 444. In that case the claim arose on a contract for the sale of goods, and the question to be decided was whether the seller of goods c.i.f. was excused from delivery because his goods had been requisitioned by the Government. He pleaded the provisions of the Defence of the Realm regulations. The Board decided that such a question arose with respect to mercantile law. Temporarily they formed part of the provisions of the law relating to the sale of goods, clearly a branch of mercantile law. Their Lordships find nothing in the case which appears inconsistent with what has been said above. The defendant's plea therefore fails *in limine* on the ground that no question had to be decided with respect to mercantile law.

But their Lordships think it desirable to add a few words as to the reason which prevailed with all the learned Judges below, that in any event the Moneylenders Acts were not such legislation as it was ever contemplated should be extended by the ordinance to the Colony. As the Acting Chief Justice said, "They are a very special municipal series of legislative provisions creating procedure and machinery and setting up restrictions and sanctions which are quite impossible

of application in our case."

No doubt all legislation is in one sense municipal; but for the purpose of the ordinance there seems to be a clear distinction between legislation which has the effect of modifying the general principles of any branch of mercantile law, and legislation which is intended to regulate the exercise in England only of particular activities by providing for registration, licences, procedure, and penalties which can only be carried into effect in England itself. Such law is not capable of extension to the Colony, and in their Lordships' opinion for that reason is not covered by the ordinance.

It is unnecessary to rehearse the various provisions in the Moneylenders Acts which indicate that the Act is intended solely for the English regulation of the activities of moneylenders in England, and would be unsuitable and impossible of the performance in the East. In no event could it be included in the law to be administered in pursuance of the ordinance.

Counsel for the appellant preferred to meet this construction of the statute on narrower ground. The Acts, he said, are to be applied in Singapore; but *lex non cogit ad impossibilia*, and if some of the provisions are found there to be impossible of performance, e.g., registration, then there will be no duty to obey them. But such parts as are possible, as the provisions in Section 6, are incorporated into the law of Singapore. The whole Act is shipped to Singapore, but parts cannot be landed and are dumped in the harbour; the rest is imported. Their Lordships cannot accept this contention. The Act must be judged as a whole, and if it is found to be restricted to regulation of activities in England and not to be capable of general application, it is not within the scope of the ordinance at all. To take one or two sections of such an Act, divorced from their context, is to apply a new law, which is not the law of England, and so abstracted might never have been introduced into England at all.

The learned Judges, in arriving at their conclusions on this point, appear to have fortified their opinion by reference to the words used by Lord Dunedin in giving the judgment of the Board in the case above cited, that the Defence of the Realm Act and the Court Emergency Powers Act could be pleaded if the facts allowed of their application. In that case the attention of the Judicial Committee was not directed to the question raised here, which did not arise. The words used only mean if the facts in the particular case make the particular provision applicable; in that case if the performance was in fact prevented by requisition.

In the present case, therefore, their Lordships are unable to rely upon a previous decision of their own in support of the view that they have expressed. But though unfortified by authority, they entertain no doubt that the result is as stated. They will therefore humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal.

Appeal dismissed.

Solicitors for the Appellant—*Tamplin, Joseph, Pensonby, Ryde & Flux*, London; *Chan & Eber*, Singapore. Solicitors for the Respondent—*Speechly Mumford & Craig*, London; *Donaldson & Burkinshaw*, Singapore.

(Appellate Civil Jurisdiction)

(Murison, C. J., Burton & Whitley, JJ.)

February 21, 1933

RE MOHAMED TALHAH bin MOHAMED ARIFF (A Lunatic)

(Penang Civil Appeal No. 3 of 1933)

Practice—Lunacy—selection and appointment of committee—delegation of Judge's power to Registrar—Civil Procedure Code, Ss. 815 & 1008.

The Judge has no power under Section 815 of the Civil Procedure Code to direct an enquiry to be held by the Registrar as to who is a fit and proper person to be appointed Committee of a lunatic. An order of a Judge directing such an enquiry will vitiate all subsequent proceedings.

APPEAL from an order of Prichard, J. dated the 10th October 1932.

Proceedings were started by O.S. No. 127/32, in which Md. Hashim a brother of the lunatic was applicant, for an inquiry to be held to decide whether Md. Talhah was of unsound mind and incapable of managing himself or his own affairs and if so for the appointment of the applicant to be committee of the person and estate of Md. Talhah.

The inquiry was directed to be held and was held before the Judge in Chambers on the 10th October 1932 when the evidence of two doctors was heard and the Judge found that Md. Talhah was of unsound mind and incapable of managing his own affairs.

At this inquiry both the applicant and Md. Talhah's wife Karima were represented by Solicitors the latter *in forma pauperis*. On Karima's statement that she opposed the appointment of the applicant as committee a reference was, on the suggestion of the applicant, directed to the Registrar to report as to who was a proper person to be appointed committee. The order was in the following terms:—

"The Court doth declare the lunatic abovenamed to be of unsound mind and incapable of managing his own affairs. And it is ordered that a reference be made to the Registrar of this Court or his Deputy to enquire and report as to who is a fit and proper person to be appointed Committee of the person and estate of the said Lunatic".

Md. Hashim took out a Summons to proceed before the Registrar and an inquiry was held before the Registrar at which evidence was called both for Md. Hashim and for Karima and the Registrar made a certificate on the 10th November 1932 in which he reported that he had held an inquiry and as a result found "that Karima binti Tuan Chik is the proper person to be appointed committee."

A summons was taken out before the Judge in Chambers to confirm this certificate and for the appointment of Karima as committee.